

Declaration of Michael Clancy on behalf of Covad Communications Group

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Special Access Rates for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers)	
)	
AT&T Corp. Petition for Rulemaking to)	
Reform Regulation of Incumbent Local)	RM-10593
Exchange Carrier Rates for Interstate Special)	
Access Services)	

**DECLARATION OF MICHAEL CLANCY OF
COVAD COMMUNICATIONS**

I, Michael Clancy, hereby declare under penalty of perjury that the following is true and correct:

1. My name is Michael Clancy. I currently am employed in the position of External Affairs Business Partner for Covad Communications ("Covad"). My business address is 149 Margaret Boulevard, Merrick, NY 11566. My primary job responsibilities for Covad include: (a) interfacing with Verizon and Covad customers as a technical, operational, and policy liaison for Covad for all of the states in the Verizon region; (b) advising Covad on technical issues related to communications networks in the Verizon region; and (c) participating in Covad's Government and External Affairs group on the technical aspects of communications policy.

2. I have been employed in the telecommunications industry since 1970. I began my career at New York Telephone Company as a Switching Equipment Technician. I took on assignments of increasing responsibility, including leading a team that designed private networks for the Securities and Banking Industry while at NYNEX. I left Bell Atlantic in July

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1998 as the Director of Interoffice Network Provisioning and Process Management. I began working at Covad in August 1998 as the Vice-President Operations for the New York Metropolitan region. I was responsible for building out the collocation facilities and acquiring network facilities including transport between collocation arrangements. In my current role as Business Partner two specific business areas in which I contribute are partnering with our network planning teams to make decisions about what vendor to use for transport facilities and with our Product teams for new product development.

3. This Declaration is made on behalf of Covad, and in support of the comments filed jointly by Covad, XO Communications, and NuVox Communications in the above-captioned proceeding (the “Joint Comments”) to refresh the record and to urge the Commission to eliminate Phase II special access pricing flexibility and to reinitialize incumbent LEC rates for special access.¹

4. Covad is a facilities-based competitive local exchange carrier (“CLEC”) that provides (either directly or indirectly through wholesale partners) voice, data, and digital subscriber line (“DSL”) broadband services to residential customers and DSL, voice over internet protocol (“VoIP”), and integrated T1 services to small, medium and large businesses, and to other carriers on a wholesale basis. The company’s network covers 44 states.

5. This Declaration is divided into four sections. In Section I, I demonstrate that, where unbundled network element (“UNE”) loops are not available at forward looking cost-based rates or via self-supply or competitive supply, incumbent local exchange carrier (“ILEC”) special access are not viable economic substitutes. In Section II, I explain that Covad has no

¹ *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Public Notice, FCC 07-123 (July 9, 2007).

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alternative but to rely on ILEC special access channel mileage when dedicated transport UNEs and equivalent Type I facilities-based offerings are not available. In Section III, I describe how Covad determines the availability of competitive alternatives to ILEC special access. Finally, in Section IV, I describe some of the exclusionary and anticompetitive conditions that ILECs tie to their special access discount plans.

I. Procurement of Loops/Channel Terminations

6. Where UNE loops are not available at forward-looking cost-based rates, Covad lacks real economic alternatives. ILEC special access channel terminations are not an economic substitute because they are priced unreasonably with discriminatory terms and conditions. In addition, neither competitive access provider (“CAP”) facilities, nor self-provisioned facilities are available economic substitutes. This is, in large part, because Covad and other CLECs predominantly serve small-to-medium-sized businesses that seldom generate sufficient demand to make self-supply by Covad or a CAP of copper or fiber loop facilities economic. Since obtaining rights of way and leasing duct space or negotiating pole attachments is such an arduous, time-consuming, and expensive proposition, it is never economic for Covad or a CAP to over-build new facilities to provision a single DS1 or DS3. The only environment that provides economic incentive for new investment is when the CAP or CLEC can be assured to acquire a significant economy of scale at a particular address. Demand likely would need to be at or significantly above the three DS3 level at the address for self-supply to be economic. Since small and medium-sized businesses are not usually located in expensive, high-density addresses, it is seldom economic for Covad or a CAP to build new loop facilities to them.

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7. As of July 27, 2007, less than **BEGIN CONFIDENTIAL** **END** **CONFIDENTIAL** of Covad's loop access needs are met by using competitive alternatives or ILEC special access. While Covad has been able to purchase a very limited number of loops from CAPs, ultimately such purchases failed to be economic. Upon analysis, Covad determined that the competitive providers in most cases were actually purchasing special access services from the ILEC in order to provision the service. While certain factors may allow a competitive provider to obtain special access for these "Type II" loop offerings more cheaply than Covad could (*e.g.*, via mutual discount agreements with the ILEC), the prices offered to Covad generally do not permit Covad to be competitive in the market and generate any return. As a result, Covad generally avoids such arrangements. Simply put, ILEC special access channel terminations, whether purchased directly by Covad, or indirectly as part of a Type II service offering, are priced so far above cost that it is, in all but the rarest of circumstances, uneconomic and uncompetitive for Covad to use them.

8. Based on Covad's experience, fixed wireless service also does not represent a widely available substitute for UNE loops at this time. Covad operates wireless facilities in four markets, covering a relatively small portion of its wireline footprint. It has not utilized fixed wireless to replace its wireline-based services, but rather to provide complementary products that wireless enables. Any deep penetration of the existing loop infrastructure is still only a promising but distant future prospect. Similarly, incumbent LECs have not provided sufficient wireless interconnection rights to permit use of fixed wireless to backhaul traffic from Covad's wireline central office collocations, leaving Covad with access only to ILEC special access where UNE-based transport is not available.

II. Procurement of Dedicated Transport / Channel Mileage

9. In contrast to the market for loops or channel terminations, where competitive supply is virtually non-existent, the market for dedicated transport or channel mileage is characterized by sporadic availability of competitive alternatives. Availability must be determined on a route- and capacity-specific basis. Here, too, the distinction between Type I (via a provider's own facilities) and Type II (via resold special access) offerings is critical, as most Type II offerings are not competitive. Covad's experience is that, in many wire centers where dedicated transport UNEs have been rendered unavailable by non-impairment findings, facilities-based competition does not exist on a substantial number of non-impaired routes. For these routes, Covad has no choice but to rely on ILEC special access that typically is priced considerably higher than the forward-looking, cost-based rates for corresponding UNE dedicated transport.

III. Determining the Availability of Competitive Alternatives

10. In order to incur the lowest possible costs and, in turn offer competitive prices for its own customers, Covad maintains a comprehensive list of all central offices where Covad is collocated with a CAP. As discussed above, Covad's experience is that there are virtually no Type I competitive loop offerings available to serve its target market of small-to-medium-sized business customers. For dedicated transport, a CAP needs to serve both ends of the transport link via its own facilities (Type I) in order to compete effectively. While Covad does provide service from locations where it is not collocated with a CAP able to make available a competitive Type I offering, the extra cost of doing so (using ILEC special access in lieu of UNEs) generally skews Covad's cost structure so that it is unable to effectively compete for

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customers. Thus, the lack of competitive alternatives for transport limits the ability of Covad to compete in many markets.

11. Notably, the utility of CAP services to Covad is not solely a question of whether the CAP has a Type I service offering at a competitive price. Economies of scale must also be considered. Before using a CAP, Covad must build interconnection facilities at considerable cost. These capital expenditure requirements can make it uneconomic to use competitive transport, especially when the desired circuit is small or is on an isolated route.

IV. Anticompetitive Terms and Conditions

12. Covad often is unable to avail itself of the modest discounts offered on special access prices by ILECs. This is because, in addition to finding even the discounted prices excessive and uneconomic, Covad is unable to agree to the terms and conditions of such discount plans. For example, discount plans that would require Covad to convert its base of UNEs to special access, in the absence of significant price reductions beyond those discounts presently offered, would raise Covad's overall costs significantly. Percentage of "spend" and growth requirements also are uneconomic and therefore are unacceptable to Covad.

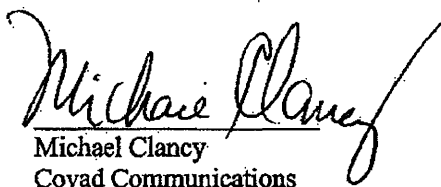
13. The mechanics of certain volume and term discount plans also make it difficult for Covad to realize even modest relief from month-to-month special access plans offered through volume and term commitments. For example, while Qwest offers month-to-month special access pricing, the rates are not at all attractive. All other rate plans require a minimum of a one-year circuit-specific commitment with significant early termination penalties.²

² Qwest also offers a commitment plan (90%) that allows some "float" but with severe penalties if the total circuits fall below 90% of the ordered number as measured each calendar year. The commitment plan is regional and includes all circuit in all fourteen states of a particular type (DS1, DS3) are automatically captured under the plan, and circuit of the same type cannot be placed in a different rate plan during the four year commitment. All other term plans are on a per circuit basis with significant early

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To decide how to procure (as a last resort) special access service in such situations, Covad reviews its network demand forecasts and attempts to determine if engaging in a commitment contract will align with its plans for network expansion. The benefits of any such offerings must be weighed against the risk that customer demand for Covad's services will decrease prior to the end of the commitment, leaving Covad obligated to continue to pay for the special access circuits for the term of the agreement despite the loss of revenue from customers. Often, this calculation results in Covad limiting service offerings as special access pricing inputs would make it uneconomic for Covad to provide competitively priced services to its target market of small-to-medium-sized business customers.

14. This concludes my Declaration.


Michael Clancy
Covad Communications

Dated: August 8, 2007

termination fees. Early termination penalties for DS3 circuits are especially high – 100% of MRCs first year; 70% MRCs for all later years.